

TOXIC SUBSTANCES CONTROL ACT (TSCA)12-2-D. Administrative Enforcements: Signing Penalty Remittance Agreements and Remittance Orders

1. AUTHORITY. To sign agreements to remit all or part of a civil administrative penalty, as authorized by Section 16(a)(2)(C) of the Toxic Substances Control Act, if conditions cited in the remittance agreement are met by the Respondent.
2. TO WHOM DELEGATED. Director, Land and Chemicals Division.
3. LIMITATIONS.
 - a. Exercise of this authority is subject to the limitations of Headquarters Delegation 12-2-D. See Additional References 5.c. and 5.d., below.
 - b. Exercise of this authority is subject to review by and consultation with the Regional Counsel or designee.
 - c. The authority to sign an order remitting the penalty when the Agency is satisfied that the conditions have been met, and to sign an order not remitting the penalty and declaring that payment of the penalty is due, and collecting the required payment, when the Agency determines the conditions have not been met, is retained by the Regional Administrator.
4. REDELEGATION AUTHORITY. This authority may not be redelegated.
5. ADDITIONAL REFERENCES.
 - a. Section 16(a)(2)(C) of TSCA, which permits the Administrator to remit penalties with conditions.
 - b. "Toxic Substances Control Act Settlement with Conditions" (November 16, 1983), which gives criteria for the use of remittance agreements, a description of the format and contents of such agreements, and a summary of the procedures for using these arrangements .
 - c. The requirement in Headquarters Delegation 12-2-D to consult with the Assistant Administrator for Enforcement and Compliance Assurance may generally be met as follows. (See 5.d., below, for Additional References in cases involving federal entities or federal facilities.) When exercising these authorities, the Region should consult with the Assistant Administrator for Enforcement and Compliance Assurance or designee in the following circumstances: (i) for administrative penalty orders and settlements where the

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bottom-line penalty is equal to or greater than \$500,000, (ii) where an administrative penalty order or proposed settlement would not fully comport with applicable penalty policies or recover the full amount of economic benefit, and (iii) in cases that involve nationally significant issues. See Additional References in 5.c.i. through 5.c.iv., below. For settlement agreements involving a bottom-line penalty less than \$500,000, with no nationally significant issues, the Region need not consult with the Assistant Administrator for Enforcement and Compliance Assurance, but please see Additional Reference 5.c.v., below.

- i. Memorandum, "OECA/Regional Procedures for Civil Judicial and Administrative Enforcement Case Redelegation", from Robert Van Heuvelen, Director, Office of Regulatory Enforcement, dated November 9, 1994.
- ii. Current list of nationally significant issues under FIFRA, TSCA and EPCRA: "Final List of Nationally Significant Issues and Process for Raising Issues to TPED," Jesse Baskerville, Director, Toxics and Pesticides Enforcement Division, November 1994; "Draft Revision of the Nationally Significant Issues List for TSCA, FIFRA, and EPCRA and Process for Raising Issues to TPED," Ann Pontius, Director, Toxics and Pesticides Enforcement Division, March 5, 2002.
- iii. Memorandum, "Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases", from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, dated July 11, 1994.
- iv. Memorandum, "Redelegation of the Assistant Administrator for OECA's Concurrence Authority in Settlement of Certain Civil Judicial and Administrative Enforcement Actions", from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, dated July 8, 1994.
- v. "Delegation of Settlement Authority to Regional Counsel for Administrative Cases with Civil Penalties of less than \$500,000 and No Nationally Significant Issues", available to Region 5 attorneys as Transmittal 11 in the POLICY.OFF folder of the G: drive, at G:\POLICY.OFF\Trans11.wpd.

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- d. When exercising the authorities in Section 1 above in actions that involve federal departments, agencies or instrumentalities; federal facilities; or contractor-operators of federal facilities, the Region should also consult with the Federal Facilities Enforcement Office. See Additional References 5.c.i. (p. 5), above, and 5.d.i. through 5.d.iii.
- i. Memorandum, "Guidance on Coordination of Federal Facility Enforcement Actions With the Office of Enforcement," from Thomas L. McCall, Jr., Acting Deputy Assistant Administrator for Federal Facilities Enforcement, dated October 22, 1992.
 - ii. "Coordination of Federal Facility Enforcement Actions with OECA" (Granta Y. Nakayama, November 17, 2006, affirming the continued applicability of the 1992 McCall Memorandum above).
 - iii. "Guidance on Coordination of Federal Facility Enforcement Actions with the Office of Enforcement and Compliance Assurance" (Michael M. Stahl, September 17, 1997, affirming and reissuing the 1992 McCall Memorandum above).